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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TEDDY SEUNG BAEK,

Petitioner,

vs.

DAVID LONG, Warden, et al.,

Respondents.

Civil No. 13CV3206BENDHB

**ORDER DISMISSING HABEAS
PETITION WITHOUT
PREJUDICE AS SECOND OR
SUCCESSIVE**

On December 20, 2013, Petitioner, a state prisoner proceeding pro se, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. In this action Petitioner is challenging his February 7, 2008, San Diego County Superior Court conviction and sentence in Case No. SCD203314. (See Petition at 1-2, ECF No. 1.)

PRIOR FEDERAL HABEAS PETITIONS DENIED ON THE MERITS

On February 21, 2013, Petitioner filed in this Court a Petition for Writ of Habeas Corpus in Southern District of California Civil Case No. 13cv0421 MMA (BLM). (See Petition in So. Dist. Ca. Civil Case No. 13cv0421 MMA (BLM), ECF No. 1.) In that petition, Petitioner also challenged his conviction and sentence in San Diego Superior Court Case No. SCD203314. On December 16, 2013, this Court dismissed the petition because it had been filed after the expiration of the one-year statute of limitations. (See Order filed 12/16/13 in So. Dist. Ca. Civil Case No. 13cv0421 MMA (BLM), ECF NO.

17.) Petitioner filed a notice of appeal in that case on December 23, 2013. (*See* So. Dist. Ca. Civil Case No. 13cv0421, ECF No. 19.) A certificate of appealability was denied on December 30, 2013. (*Id.* at ECF No. 22.)

INSTANT PETITION BARRED BY GATEKEEPER PROVISION

Petitioner is now seeking to challenge the same conviction he challenged in his prior federal habeas petition. Unless a petitioner shows he or she has obtained an order from the appropriate court of appeals authorizing the district court to consider a successive petition, the petition may not be filed in the district court. *See* 28 U.S.C. § 2244(b); *McNabb v. Yates*, 576 F.3d 1028, 1030 (9th Cir. 2009) (holding that dismissal for failure to comply with one-year statute of limitations renders subsequent petitions challenging the same conviction or sentence “second or successive” under 2244(b)). Here, there is no indication the Ninth Circuit Court of Appeals has granted Petitioner leave to file a successive petition.

CONCLUSION

Because there is no indication Petitioner has obtained permission from the Ninth Circuit Court of Appeals to file a successive petition, this Court cannot consider his Petition. Accordingly, the Court **DISMISSES** this action without prejudice to Petitioner filing a petition in this court if he obtains the necessary order from the Ninth Circuit Court of Appeals. *The Clerk of Court is directed to mail Petitioner a blank Ninth Circuit Application for Leave to File Second or Successive Petition together with a copy of this Order.*

IT IS SO ORDERED.

DATED: _____


HON. ROGER T. BENITEZ
United States District Judge